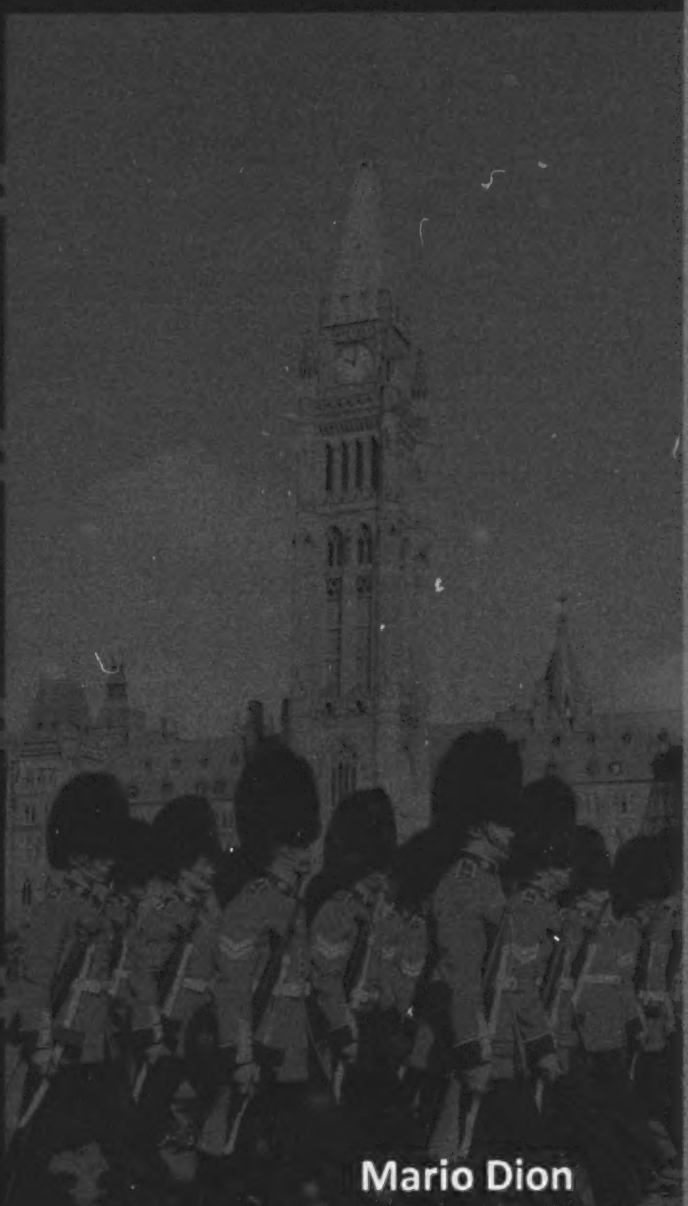
Office of the
Conflict of Interest and
Ethics Commissioner

Commissariat aux
conflits d'intérêts et
à l'éthique

Morneau Report

2018

June 2018



Mario Dion

Conflict of Interest and
Ethics Commissioner

Morneau Report
made under the *CONFLICT OF INTEREST ACT*

For additional copies of this document, please contact:

Office of the Conflict of Interest and Ethics Commissioner
Parliament of Canada
66 Slater Street, 22nd Floor
Ottawa, Ontario K1A 0A6

Telephone: 613-995-0721
Fax: 613-995-7308
Email: ciec-ccie@parl.gc.ca

Ce document est également publié en français.

This document is available online at the following address: **http://ciec-ccie.parl.gc.ca/**

© Office of the Conflict of Interest and Ethics Commissioner, Parliament of Canada, 2018

062018-74E

PREFACE

The *Conflict of Interest Act* (Act) came into force on July 9, 2007.

The Conflict of Interest and Ethics Commissioner may conduct an examination under the Act at the request of a parliamentarian or, as is the case with this examination, on his own initiative.

When an examination is conducted on the Commissioner's own initiative, unless the examination is discontinued, the Commissioner is required to provide a report to the Prime Minister setting out the relevant facts of the case as well as the Commissioner's analysis and conclusions in relation to the examination. At the same time that the report is provided to the Prime Minister, a copy of the report is also provided to the public office holder or former public office holder who is the subject of the report and the report is made available to the public.

01 Executive Summary

03 Concerns

04 Process

05 Findings of Facts

09 Mr. Morneau's Position

10 Analysis and Conclusion

13 Schedule: List of Witnesses

EXECUTIVE SUMMARY

This report presents the findings of my examination under the *Conflict of Interest Act* of the conduct of the Honourable Bill Morneau, Minister of Finance, in relation to the introduction, in October 2016, of Bill C-27, which seeks to amend the *Pension Benefits Standards Act, 1985*.

The *Pension Benefits Standards Act, 1985* applies to some 18,000 federally regulated private-sector employers with 853,000 employees and covers some 1,230 pension plans. It currently provides for two types of pension plans: defined benefit plans and defined contribution plans. Bill C-27 would create a third type of plan, known as a target benefit plan. It would also create new management obligations for administrators of such plans, which would constitute new billable activities for them.

The Office received requests for an examination from two Members of Parliament alleging that Mr. Morneau was in a conflict of interest when he introduced Bill C-27 because the changes proposed in it could further his interests as a shareholder of Morneau Shepell Inc., a major administrator of pension plans. Although neither request met the criteria for a valid examination request, the Office had some concerns, and in November 2017 my predecessor launched this examination on her own initiative under subsection 45(1) of the *Conflict of Interest Act*. I decided to continue the examination when I assumed the position of Conflict of Interest and Ethics Commissioner in January 2018.

The examination focussed on whether Mr. Morneau contravened subsection 6(1) and section 21 of the Act.

Subsection 6(1) prohibits public office holders from making a decision or participating in a decision related to the exercise of an official power, duty or function if they know or reasonably should know that, in doing so, they would be in a conflict of interest. Section 21 requires public office holders to recuse themselves from any discussion, decision, debate or vote on any matter in respect of which they would be in a conflict of interest.

As stated in section 4, a public office holder is in a conflict of interest within the meaning of the Act when he or she exercises an official power, duty or function that provides an opportunity to further his or her private interests or those of his or her relatives or friends or to improperly further another person's private interests.

I first had to determine whether the interests involved are private interests within the meaning of the Act. Subsection 2(1) states that private interests do not include an interest in a decision or matter that is of general application or that affects a public office holder as one of a broad class of persons.

The *Pension Benefits Standards Act, 1985* covers all federally-regulated private-sector employers and certain Crown corporations, as well as their current and retired employees, and creates obligations for all pension plan administrators. Neither Bill C-27 nor the legislation it amends targets a particular class within this federally-regulated sector.

Since the matter under examination relates to all stakeholders affected by the *Pension Benefits Standards Act, 1985*, it is of general application. Mr. Morneau's interests, those of his relatives, and those of Morneau Shepell Inc. in this matter are excluded from the application of the Act.

I therefore find that, in making decisions leading to the introduction of Bill C-27, Mr. Morneau did not place himself in a conflict of interest and did not contravene subsection 6(1) or section 21 of the *Conflict of Interest Act*.

CONCERNS

On October 17, 2017, the Office of the Conflict of Interest and Ethics Commissioner (Office) received a request from Mr. Nathan Cullen, Member of Parliament for Skeena–Bulkley Valley, to investigate the conduct of the Honourable Bill Morneau, P.C., M.P, Minister of Finance.

Mr. Cullen's request alleged that Mr. Morneau had placed himself in a conflict of interest by introducing, on October 19, 2016, Bill C-27, *An Act to amend the Pension Benefits Standards Act, 1985*, given that the changes proposed in the bill could further his interests as a shareholder of Morneau Shepell Inc. Mr. Cullen wrote that Morneau Shepell Inc. could receive additional revenue if Bill C-27 were adopted, given its experience as a pension fund manager. On October 26, 2017, the Office informed Mr. Cullen that his request did not meet the criteria set out in the *Conflict of Interest Act* (Act) for an examination request, although it did raise concerns.

After a preliminary review of Mr. Cullen's question, and after gathering additional information found in the public domain, the Office wrote to Mr. Morneau on October 26, 2017, to inform him that there were concerns with the fact that at the time Mr. Morneau introduced the bill, he owned, albeit indirectly, shares in Morneau Shepell Inc. In a letter dated November 3, 2017, Mr. Morneau responded to the concerns raised by the Office.

On November 8, 2017, the Office received a request from the Honourable Pierre Poilievre, P.C., Member of Parliament for Carleton, to investigate the conduct of Mr. Morneau under the Act and the *Conflict of Interest Code for Members of the House of Commons* (Code). Mr. Poilievre's letter stated that Mr. Morneau was in a conflict of interest given that Bill C-27, introduced by Mr. Morneau, could further his interests as a shareholder of Morneau Shepell Inc. On November 10, 2017, the Office informed Mr. Poilievre that his request did not meet the criteria set out in the Act or the Code.

After a thorough review of Mr. Morneau's response of November 3, 2017, my predecessor, Ms. Mary Dawson, determined that she had reason to believe that Mr. Morneau had contravened the Act.

PROCESS

On November 10, 2017, my predecessor wrote to Mr. Morneau advising him that she was commencing an examination on her own initiative under subsection 45(1) of the Act to determine whether he had contravened subsection 6(1) and section 21 of the Act. On that date, she also wrote to Mr. Cullen and Mr. Poilievre, informing them that an examination under the Act into Mr. Morneau's conduct had been launched.

Subsection 6(1) of the Act prohibits public office holders from making a decision or participating in a decision related to the exercise of an official power, duty or function if they know or reasonably should know that, in doing so, they would be in a conflict of interest.

Section 21 of the Act requires public office holders to recuse themselves from any discussion, decision, debate or vote on any matter in respect of which they would be in a conflict of interest.

The Office received Mr. Morneau's response on December 11, 2017. On January 9, 2018, I began my term as the Conflict of Interest and Ethics Commissioner. After considering the information related to this case, I decided that the examination would proceed, and I notified Mr. Morneau of this on January 15, 2018. I conducted an interview with Mr. Morneau on February 5, 2018.

The Office also obtained documents from the Department of Finance Canada, the Privy Council Office and Morneau Shepell Inc. The Office interviewed under oath several officials from the Department of Finance and from Minister Morneau's office.

In keeping with the practice established by my predecessor, Mr. Morneau was given an opportunity to comment on a draft of the factual portions of this report (Concerns, Process, Findings of Fact and Mr. Morneau's Position) before it was finalized.

FINDINGS OF FACTS

Mr. Morneau's professional activities prior to entering federal politics

From 1990 to his election in October 2015, Mr. Morneau worked for the business originally founded by his father and currently known as Morneau Shepell Inc., a publicly traded company since 2005. It is public knowledge that, during the period relevant to this examination, Mr. Morneau's father owned a number of shares of Morneau Shepell Inc. During his last years with Morneau Shepell Inc., Mr. Morneau was the company's executive chairman.

According to its website, Morneau Shepell Inc. is "the only human resources consulting and technology company that takes an integrated approach to employee assistance, health, benefits and retirement needs." The website also states that Morneau Shepell Inc. is "the largest administrator of retirement and benefits plans and the largest provider of integrated absence management solutions in Canada."

In addition to his position at Morneau Shepell Inc., in 2012, Mr. Morneau was appointed as a pension investment advisor to the Ontario Minister of Finance. In 2014, the Ontario Premier appointed him to an expert panel on the development of a provincial pension supplement to the Canada Pension Plan. Also, from 2010 until 2014, Mr. Morneau chaired the C.D. Howe Institute. According to its website, the Institute is "a trusted source of essential policy intelligence, distinguished by research that is nonpartisan, evidence-based and subject to definitive expert review." In the period during which it was under Mr. Morneau's leadership, the Institute issued ten publications on retirement plans in Canada.

Prior to his election on October 19, 2015, Mr. Morneau held indirectly just over two million shares in Morneau Shepell Inc. Shortly after he was elected, Mr. Morneau divested himself of one million of these shares. On October 19, 2016, at the time Bill C-27 was introduced, he still held indirectly just over one million shares in the company.

Target benefit pension plans and Bill C-27

The *Pension Benefits Standards Act, 1985* applies to approximately 18,000 federally-regulated private-sector employers in areas of activity such as interprovincial transportation, banking and telecommunications, and to certain Crown corporations. Most federal public servants, staff and members of the Canadian Forces and the Royal Canadian Mounted Police are covered by different pension plans and legislation. There are roughly 1,230 federally-regulated pension plans that fall under the *Pension Benefits Standards Act, 1985*, which represents about 7% of pension plans in Canada. Documents from the Department of Finance state that approximately 853,000 employees are covered under these plans.

The *Pension Benefits Standards Act, 1985* currently provides for two types of pension plans: defined benefit plans and defined contribution plans.

Defined benefit pension plans provide employees who retire at the age determined by these plans with a lifetime pension, the amount of which is set and guaranteed by the employer, sometimes with other benefits such as indexation of the lifetime pension to the cost of living or the possibility of transferring a portion of the pension to the surviving spouse after the retiree's death.

Defined contribution pension plans offer employees who retire at the age determined by these plans with a total amount consisting of employer contributions, employee contributions, and investment earnings generated by these amounts. The retiree must choose how this fund is to be paid out. Depending on the retiree's choices and longevity, there is a risk that he or she may deplete the fund in the final years of his or her life.

Bill C-27 seeks to amend the *Pension Benefits Standards Act, 1985* to create an intermediate plan. The type of plan proposed by Bill C-27, known as a target benefit pension plan, would provide pensioners at the retirement age determined by these plans with a lifetime pension of a predictable amount that could be increased or decreased, based in part on the performance of the plan fund.

Pension plan administrators, who are indirectly affected by Bill C-27, would have new management obligations that do not currently exist in the context of defined benefit pension plans. Bill C-27 includes the following new obligations to administrators of target benefit pension plans:

- conducting annual actuarial valuations, as opposed to the triennial valuations required for defined benefit pension plans;
- conducting actuarial valuations prior to the use of funding surpluses or the elimination of funding deficits; and
- negotiating with a life insurance company to purchase a life annuity for an affected person who has refused to exchange his or her former defined benefit pension plan for a new target benefit pension plan.

These new requirements constitute new billable activities for pension plan administrators while the bill also removes opportunities for different billable activities associated with other pension plan schemes.

Connections between Morneau Shepell Inc. and Bill C-27

In the November 2013 issue of its publication entitled *Vision* (Volume 16, Number 2), Morneau Shepell Inc. wrote that it worked closely with the taskforce created by the Government of New Brunswick in devising and implementing a new shared risk pension plan in that province. At the time, Morneau Shepell Inc. was actuary to the province. New Brunswick's shared risk pension plan is similar in a number of respects to the target benefit pension plan in Bill C-27.

On April 24, 2014, under the government led by the Right Honourable Stephen Harper, the Department of Finance Canada began consultations on a potential target benefit pension plan framework. Consultations were open to the public, and some stakeholders, including Morneau Shepell Inc., were invited to provide comments.

The consultation papers proposed dividing pension benefits owed to retirees into two categories: base benefits consisting of a lifetime pension of a predictable amount, and ancillary benefits consisting of future indexing, early retirement benefits, survivor benefits, etc. Comments were received from approximately fifty stakeholders, including from defined benefit and defined contribution plan sponsors, unions, the actuarial and legal professions, and retiree groups.

On June 23, 2014, Morneau Shepell Inc. submitted its comments in support of creating a target benefit pension plan and referred to the company's involvement in developing a similar plan in New Brunswick. Although Mr. Morneau was not involved in preparing or approving Morneau Shepell Inc.'s comments, as the executive chair, he would have been aware of the submission.

In the budget speech delivered on April 21, 2015, the previous Government announced that it would continue to assess a voluntary target benefit plan option for Crown corporations and federally-regulated private-sector pension plans.

Mr. Morneau's appointment as minister and introduction of Bill C-27

After he was elected as the Member of Parliament for Toronto Centre on October 19, 2015, Mr. Morneau was sworn in as the Minister of Finance on November 4, 2015.

On November 10, 2015, in the week following his appointment, Mr. Morneau attended an initial briefing with senior management at the Department of Finance. Among the departmental priorities discussed at this briefing, the target benefit pension plan was discussed in general terms, without the Minister giving instructions. Several witnesses testified that it was the Department, not the new minister that had proposed implementing this plan, that the file was already well advanced and that the Department was ready to bring forward essentially the same legislative framework that had been prepared for the preceding government further to the 2014 public consultations. During this briefing, Mr. Morneau reportedly made few comments and approved the framework as presented.

On January 4, 2016, at a second briefing during which the target benefit pension plans were discussed, Mr. Morneau approved the departmental position to bring such a bill forward.

During this time period, Mr. Morneau initiated discussions with the Office as part of his initial compliance process. Following these discussions, Mr. Morneau and the Office agreed that a conflict of interest screen was necessary and was subsequently established on February 14, 2016. As part of the screen, Mr. Morneau agreed to abstain from participating in any matters or decisions, other than those of general application, pertaining to Morneau Shepell Inc. All the witnesses interviewed confirmed that they were aware that Mr. Morneau had a conflict of interest screen in place.

In the spring of 2016, in accordance with the usual process for introducing a government bill in the House of Commons, Mr. Morneau obtained the necessary approvals.

On October 19, 2016, Mr. Morneau introduced Bill C-27, *An Act to amend the Pension Benefits Standards Act, 1985*. Mr. Morneau testified that Bill C-27 was a continuation of the work of the previous government. He also stated in his written submissions that he did not provide any political direction to amend the scope, effect or content of the bill, which was confirmed by departmental officials.

According to a press release by Morneau Shepell Inc., Bill C-27 is not expected to have a material impact on the company.

MR. MORNEAU'S POSITION

Mr. Morneau shared his position with my predecessor in a letter dated December 11, 2017, together with numerous documents and representations prepared by his legal counsel. He believes that Bill C-27 did not provide him with an opportunity to further private interests.

Mr. Morneau is of the view that Bill C-27 is of general application, and consequently any interest that could be gained would be excluded from the definition of private interest. In his view, it is in the interest of greater retirement security for Canadians that Bill C-27 provides federally-regulated employers and employees with more retirement plan options. Mr. Morneau's legal counsel submitted that Bill C-27 did not specifically target Morneau Shepell Inc., did not narrowly focus on a class of companies and did not create a dominant interest for Morneau Shepell Inc. It is therefore of general application.

Mr. Morneau also believes that Bill C-27 will not have a tangible financial impact on Morneau Shepell Inc. since only 7% of retirement plans fall under federal jurisdiction. Furthermore, he stated that even if Morneau Shepell Inc. had the entire market for target benefit pension plans under Bill C-27 and half of federally-regulated businesses opted for a target benefit pension plan, this would result in only a very small increase in revenues for Morneau Shepell Inc.

Mr. Morneau further stated that even if Morneau Shepell Inc. were to benefit financially from the introduction of Bill C-27, the company would be affected as a member of a broad class of individuals and entities. Mr. Morneau and his counsel wrote that the class of persons with an interest in Bill C-27 is broad and includes federally regulated businesses, their employees and retirees, and more incidentally, a large number of financial services, professional services, human resources, actuarial consulting or pension and benefits organizations, the legal profession and countless persons with some form of financial interests in or linked to these organizations.

ANALYSIS AND CONCLUSION

Analysis

I must determine whether Mr. Morneau placed himself in a conflict of interest when, as Minister of Finance, he made decisions leading to the introduction of Bill C-27 for first reading in the House of Commons on October 19, 2016, given his interests and those of a relative in Morneau Shepell Inc., as shareholders, as well as the interests of Morneau Shepell Inc. resulting from a potential increase in its revenue.

The relevant provisions are subsection 6(1) and section 21 of the Act.

Subsection 6(1) reads as follows:

> *6. (1) No public office holder shall make a decision or participate in making a decision related to the exercise of an official power, duty or function if the public office holder knows or reasonably should know that, in the making of the decision, he or she would be in a conflict of interest.*

Section 21 deals with recusal and reads as follows:

> *21. A public office holder shall recuse himself or herself from any discussion, decision, debate or vote on any matter in respect of which he or she would be in a conflict of interest.*

Section 4 of the Act sets out the circumstances in which a public office holder is in a conflict of interest within the meaning of the Act. It reads as follows:

> *4. For the purposes of this Act, a public office holder is in a conflict of interest when he or she exercises an official power, duty or function that provides an opportunity to further his or her private interests or those of his or her relatives or friends or to improperly further another person's private interests.*

In considering the matter of whether Mr. Morneau's decisions leading to the introduction of Bill C-27 placed him in a conflict of interest, I must first determine whether the interests involved in this matter constitute private interests within the meaning of the Act.

Subsection 2(1) of the Act sets out certain circumstances where private interests are not engaged. The relevant portion of subsection 2(1) of the Act reads as follows:

> ***private interest*** *does not include an interest in a decision or matter:*
>
> *(a) that is of general application;*
> *(b) that affects a public office holder as one of a broad class of persons; or*
> *(c) that concerns the remuneration or benefits received by virtue of being a public office holder.*

Under the Act, a public office holder is not considered to further his or her own private interests or the private interests of another person in relation to a decision or matter that is of general application.

Mr. Morneau's position is that since Bill C-27 seeks to amend an act of general application, he could not have placed himself in a conflict of interest, nor could he have contravened subsection 6(1) or section 21 of the Act.

The Office of the Conflict of Interest and Ethics Commissioner has previously determined that, when a matter affects all those governed within an area of activity, without exception, the matter is considered to be of general application.

For example, in 2011, the Office was asked whether Members of Parliament who were grain farmers would be required to withdraw from debates or votes related to Bill C-18, *An Act to reorganize the Canadian Wheat Board*. For the purpose of the *Conflict of Interest Code for Members of the House of Commons* (Code), a Member of Parliament is not considered to further his or her own private interests or the interests of another person if the matter in question is of general application or affects the Member as one of a broad class of the public.

At that time, there were some 70,000 grain farmers in Western Canada. Although Members of Parliament who were grain farmers in Western Canada had an interest in the subject matter of Bill C-18, my predecessor ruled that it was an interest shared with all Canadian grain farmers in Western Canada. The bill was considered to be a matter that fell within the exclusions of the Code, which correspond to the ones found in section 2 of the Act, identified above.

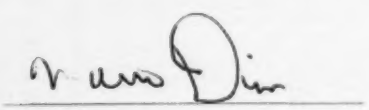
In my view, the same reasoning should apply in this case. Bill C-27 is part of the general legislative framework for pension plans. The purpose of the bill is to amend the *Pension Benefits Standards Act, 1985* to provide a framework for the establishment, administration and supervision of target benefit pension plans. This act covers all federally-regulated private-sector employers and certain Crown corporations, as well as their current and retired employees. It also creates obligations for all pension plan administrators, who must file actuarial reports with the Office of the Superintendent of Financial Institutions. Neither Bill C-27, nor the *Pension Benefits Standards Act, 1985* create particular classes within this federally-regulated sector. Rather, both affect the sector as a whole.

I am therefore of the opinion that decisions made by a minister of Finance, as well as any other federal minister, that apply to all those regulated within an area of activity, for example, decisions pertaining to pensions, taxation or benefits, are of general application.

Since this matter clearly relates to all stakeholders affected by the *Pension Benefits Standards Act, 1985*, it is of general application. Mr. Morneau's interests, those of his relatives, and those of Morneau Shepell Inc. in this matter are therefore excluded from the application of the *Conflict of Interest Act*.

Conclusion

Because Bill C-27 is of general application, I find that Mr. Morneau did not place himself in a conflict of interest and did not contravene subsection 6(1) or section 21 of the Act in this matter.



Mario Dion
Conflict of Interest and Ethics Commissioner
June 18, 2018

SCHEDULE: LIST OF WITNESSES

The names of all witnesses are listed below according to the organizations to which they belonged at the time of the events that are the subject of this examination.

Interviews

Office of the Minister of Finance

- Mr. Ian Foucher, Senior Policy Advisor
- Mr. Richard Maksymetz, Chief of Staff

Department of Finance

- Ms. Sandra Hassan, Assistant Deputy Minister
- Ms. Lynn Hemmings, Senior Director, Pensions Policy
- Mr. Paul Rochon, Deputy Minister

Written Submissions

- Ms. Lynn Hemmings, Senior Director, Pensions Policy

Information and Documents Requested

Office of the Privy Council

- Mr. Michael Wernick, Clerk of the Privy Council and Secretary to the Cabinet

Department of Finance

- Mr. Paul Rochon, Deputy Minister

Morneau Shepell Inc.

- Mr. Stephen Liptrap, President and Chief Executive Officer